

REMARKS/ARGUMENTS

Claims 1-4 and 6-33 remain pending herein.

The Applicant thanks Examiner DeMille for the courtesies extended during an interview conducted on February 24, 2004. The substance of the discussion during that interview is incorporated in the following remarks.

Claims 1-4 and 6-33 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,450,980 (Robbins '980) in view of U.S. Patent No. 5,421,799 (Rabin '799) or U.S. Patent No. 3,585,990 (Blachly '990).

Claims 1 and 23 each recite a head massaging device comprising a plurality of resilient fingers, each finger having a free end and an opposite end, the opposite ends being coupled together. The devices recited in claims 1 and 23 each further comprise an electric vibrator coupled to the opposite ends of the fingers, vibrations from the vibrator being transmitted through the fingers to the free ends of the fingers. The fingers define a head-receiving space which extends between the free ends and the opposite ends of the fingers and which has an opening formed by a juxtaposition of the free ends of the fingers, such opening being smaller than the head. At least a portion of the head-receiving space has a circumference which exceeds a circumference of the opening whereby, in use, when the device is lowered onto the head, the free ends of the fingers apply pressure to and thus massage the head.

Robbins '980 discloses a massage device with flexible fingers as depicted in Fig. 1. The Office Action contains an acknowledgment that Robbins '980 does not disclose an electric vibrator. The Office Action contains a statement that both Rabin '799 and Blachly '990 teach head massage devices with resilient fingers for massaging the scalp including vibrators to enhance the massage, and that it would have been obvious to modify Robbins

'980 to include a vibrator as disclosed in Rabin '799 or Blachly '990 to enhance the massaging effect on the scalp.

As noted above, claims 1 and 23 each recite that the vibrator is coupled to the opposite ends of the fingers and generates vibrations which are transmitted through the fingers to the free ends of the fingers, the free ends of the fingers defining an opening through which, in use, the head being massaged enters.

Rabin '799 discloses a scalp massager which includes a main supporting frame 12, a cross piece 30 mounted by a fastener 18 to the main supporting frame 12, and a cross piece 32 which is fastened to the frame 12 with a wing nut fastener assembly 16. Externally mounted on the frame 12 is a vibrating generating apparatus which has a plastic housing 20 (see Fig. 1).

Rabin '799 fails to disclose or suggest a device in which an electric vibrator is coupled to ends of fingers such that vibrations generated by the vibrator are transmitted from the vibrator to the ends of the fingers and through the fingers to the free ends of the fingers, the free ends of the fingers defining an opening through which the head being massaged enters, such that the free ends of the fingers apply pressure to and thus massage the head. In addition, if one of skill in the art were attempting to modify the device disclosed in Robbins '980 so as to include a vibration generating apparatus as disclosed in Rabin '799, the respective references do not provide any indication as to how such a modification could be accomplished. In the event that a person of skill in the art were motivated to attempt to incorporate the vibration generating apparatus of Rabin '799 in order to be coupled to the ends of the fingers of Robbins '980 which are coupled together within the handle 10, the handle 10 of Robbins '980 would be incapable of functioning as a handle.

Furthermore, the U.S. PTO has not identified any disclosure in any of the references which would have motivated one of skill in the art to attempt to modify the device of Robbins '980 by incorporating a vibration generating apparatus as disclosed in Rabin '799. The mere fact that both Robbins '980 and Rabin '799 are both directed to devices which can be used to massage a person's head does not mean that it would have been obvious to incorporate any specific feature in one reference into the structure of the other reference in precisely the manner and at a precise location such that the modified device would satisfy a feature recited in a claim in the present application. That is, Robbins '980 discloses no need or desirability for incorporating a vibration generating apparatus, and Rabin '799 contains no indication that the vibration generating apparatus disclosed therein would be advantageous for *every* device which could be used to massage a person's head, including devices which bear little or no resemblance to the massaging device disclosed in Rabin '799.

Blachly '990 discloses an electric massager which includes an electric motor assembly 63 including a motor 65 having a drive shaft 66 on which is a drive pinion 67 in driving engagement with an eccentric 70 in order to vibrate the attachment 22 of the housing 21. The electric massager of Blachly '990 also includes a hand grasping portion 25 and a plurality of fingers 44 (Blachly '990, column 2, line 64).

Blachly '990 fails to disclose or suggest a device in which an electric vibrator is coupled to ends of fingers, the free ends of which define an opening through which the head being massaged enters, such that the free ends of the fingers apply pressure to and thus massage the head. In addition, if one of skill in the art were attempting to modify the device disclosed in Robbins '980 so as to include a vibration generating apparatus as disclosed in Blachly '990, the respective references do not provide any indication as to how such a modification could be accomplished. In the event that a person of skill in the art were

motivated to attempt to incorporate the vibration generating apparatus of Blachly '990 in order to be coupled to the ends of the fingers of Robbins '980 which are coupled together within the handle 10, the handle 10 of Robbins '980 would be incapable of functioning as a handle.

Furthermore, the U.S. PTO has not identified any disclosure in any of the references which would have motivated one of skill in the art to attempt to modify the device of Robbins '980 by incorporating a vibration generating apparatus as disclosed in Blachly '990. The mere fact that both Robbins '980 and Blachly '990 are both directed to devices which can be used to massage a person's head does not mean that it would have been obvious to incorporate any specific feature in one reference into the structure of the other reference in precisely the manner and at a precise location such that the modified device would satisfy a feature recited in a claim in the present application. That is, Robbins '980 discloses no need or desirability for incorporating a vibration generating apparatus, and Blachly '990 contains no indication that the vibration generating apparatus disclosed therein would be advantageous for *every* device which could be used to massage a person's head, including devices which bear little or no resemblance to the massaging device disclosed in Blachly '990.

For the reasons discussed above, it would not have been obvious, in view of Robbins '980, Rabin '799 and/or Blachly '990 to modify the device of Robbins '980 to incorporate a vibration generating apparatus as disclosed in Rabin '799 or a vibrating means as disclosed in Blachly '990, let alone to incorporate such a vibration generating apparatus or vibrating means such that the vibrator is coupled to the ends of the fingers remote from the free ends of the fingers which define an opening through which the head of the person being massaged is inserted.

Claims 7, 15, 26 and 30 of the present application each recite a head massaging device comprising a plurality of resilient fingers, each finger having a free end and an opposite end. The devices recited in claims 7, 15, 26 and 30 each further comprise a vibrator coupled to the opposite ends of the fingers, vibrations from the vibrator being transmitted through or along the fingers to the free ends of the fingers. The fingers define a head-receiving space which extends between the free ends and the opposite ends of the fingers and which has an opening formed by a juxtaposition of the free ends of the fingers, such opening having a circumference which is smaller than a circumference of the head. At least a portion of the head-receiving space has a circumference which exceeds the circumference of the opening whereby, in use, when the device is lowered onto the head, the free ends of the fingers apply pressure to and thus massage the head.

As noted above, the Office Action contains an acknowledgment that Robbins '980 does not disclose a vibrator. The Office Action contains a statement that both Rabin '799 and Blachly '990 teach head massage devices with resilient fingers for massaging the scalp including vibrators to enhance the massage, and that it would have been obvious to modify Robbins '980 to include a vibrator as disclosed in Rabin '799 or Blachly '990 to enhance the massaging effect on the scalp.

As noted above, claims 7, 15, 26 and 30 each recite that the vibrator is coupled to the opposite ends of the fingers and generates vibrations which are transmitted through the fingers to the free ends of the fingers, the free ends of the fingers defining an opening through which, in use, the head being massaged enters.

As noted above, Rabin '799 fails to disclose or suggest a device in which a vibrator is coupled to ends of fingers such that vibrations generated by the vibrator are transmitted from the vibrator to the ends of the fingers and through the fingers to the free ends of the fingers,

the free ends of the fingers defining an opening through which the head being massaged enters, such that the free ends of the fingers apply pressure to and thus massage the head. In addition, if one of skill in the art were attempting to modify the device disclosed in Robbins '980 so as to include a vibration generating apparatus as disclosed in Rabin '799, the respective references do not provide any indication as to how such a modification could be accomplished. In the event that a person of skill in the art were motivated to attempt to incorporate the vibration generating apparatus of Rabin '799 in order to be coupled to the ends of the fingers of Robbins '980 which are coupled together within the handle 10, the handle 10 of Robbins '980 would be incapable of functioning as a handle.

Furthermore, the U.S. PTO has not identified any disclosure in any of the references which would have motivated one of skill in the art to attempt to modify the device of Robbins '980 by incorporating a vibration generating apparatus as disclosed in Rabin '799. The mere fact that both Robbins '980 and Rabin '799 are both directed to devices which can be used to massage a person's head does not mean that it would have been obvious to incorporate any specific feature in one reference into the structure of the other reference in precisely the manner and at a precise location such that the modified device would satisfy a feature recited in a claim in the present application. That is, Robbins '980 discloses no need or desirability for incorporating a vibration generating apparatus, and Rabin '799 contains no indication that the vibration generating apparatus disclosed therein would be advantageous for *every* device which could be used to massage a person's head, including devices which bear little or no resemblance to the massaging device disclosed in Rabin '799.

As noted above, Blachly '990 fails to disclose or suggest a device in which a vibrator is coupled to ends of fingers, the free ends of which define an opening through which the head being massaged enters, such that the free ends of the fingers apply pressure to and thus

massage the head. In addition, if one of skill in the art were attempting to modify the device disclosed in Robbins '980 so as to include a vibration generating apparatus as disclosed in Blachly '990, the respective references do not provide any indication as to how such a modification could be accomplished. In the event that a person of skill in the art were motivated to attempt to incorporate the vibration generating apparatus of Blachly '990 in order to be coupled to the ends of the fingers of Robbins '980 which are coupled together within the handle 10, the handle 10 of Robbins '980 would be incapable of functioning as a handle.

Furthermore, the U.S. PTO has not identified any disclosure in any of the references which would have motivated one of skill in the art to attempt to modify the device of Robbins '980 by incorporating a vibration generating apparatus as disclosed in Blachly '990. The mere fact that both Robbins '980 and Blachly '990 are both directed to devices which can be used to massage a person's head does not mean that it would have been obvious to incorporate any specific feature in one reference into the structure of the other reference in precisely the manner and at a precise location such that the modified device would satisfy a feature recited in a claim in the present application. That is, Robbins '980 discloses no need or desirability for incorporating a vibration generating apparatus, and Blachly '990 contains no indication that the vibration generating apparatus disclosed therein would be advantageous for *every* device which could be used to massage a person's head, including devices which bear little or no resemblance to the massaging device disclosed in Blachly '990.

For the reasons discussed above, it would not have been obvious, in view of Robbins '980, Rabin '799 and/or Blachly '990 to modify the device of Robbins '980 to incorporate a vibration generating apparatus as disclosed in Rabin '799 or a vibrating means as disclosed in Blachly '990, let alone to incorporate such a vibration generating apparatus or vibrating means

such that the vibrator is coupled to the ends of the fingers remote from the free ends of the fingers which define an opening through which the head of the person being massaged is inserted.

In addition, claims 15 and 30 each recite that each of the fingers has a transversely extending portion immediately adjacent the handle. None of the applied references discloses or suggests a plurality of fingers, each of which has a transversely extending portion immediately adjacent a handle which receives the ends of the fingers remote from the free ends which define an opening through which the head of the person being massaged is inserted.

It is respectfully requested that the U.S. PTO reconsider and withdraw this rejection.

Claims 1, 2, 7, 15-17, 23, 26, 27 and 29 were rejected under 35 U.S.C. §102(b) over Rabin '799.

As discussed above, Rabin '799 fails to disclose or suggest fingers having a free end and an opposite end, the opposite ends being coupled together and the free ends defining an opening through which the head of the person being massaged is inserted, and an electric vibrator coupled to the opposite ends of the fingers, vibrations from the vibrator being transmitted through the fingers to the free ends of the fingers, as recited in claims 1 and 23. In addition, Rabin '799 fails to disclose or suggest a device having a plurality of fingers each having a free end and an opposite end, a vibrator coupled to the opposite ends of the fingers, vibrations from the vibrator being transmitted through or along the fingers to the free ends of the fingers, and the free ends defining an opening through which the head of the person being massaged is inserted, as recited in claims 7, 15, 26 and 30. Rabin '799 further fails to disclose or suggest a device as described above in this paragraph in which the fingers define a head-receiving space which extends between the free ends and the opposite ends of the

fingers and which has an opening formed by a juxtaposition of the free ends of the fingers, at least a portion of the head-receiving space having a circumference which exceeds a circumference of the opening whereby, in use, when the device is lowered onto the head, the free ends of the fingers apply pressure to and thus massage the head. In addition, Rabin '799 fails to disclose or suggest a device having such fingers in which each finger has a transversely extending portion immediately adjacent a handle, as recited in claims 15 and 30.

It is respectfully requested that the U.S. PTO reconsider and withdraw this rejection.

Claims 1-3, 7-10, 15-19, 23 and 26-29 were rejected under 35 U.S.C. §102(b) over U.S. Patent No. 5, 611,771 (Taylor '771).

Taylor '771 discloses a head-mounted facial massager comprising a headset assembly 11 having two leg portions 20 and 20' and a pair of vibration generating assemblies 13, 13' which include flexible extension fingers 16 and 16', respectively.

Taylor '771 fails to disclose or suggest fingers having a free end and an opposite end, the opposite ends being coupled together and the free ends defining an opening through which the head of the person being massaged is inserted, and an electric vibrator coupled to the opposite ends of the fingers, vibrations from the vibrator being transmitted through the fingers to the free ends of the fingers, as recited in claims 1 and 23. In addition, Taylor '771 fails to disclose or suggest a device having a plurality of fingers each having a free end and an opposite end, a vibrator coupled to the opposite ends of the fingers, vibrations from the vibrator being transmitted through or along the fingers to the free ends of the fingers, and the free ends defining an opening through which the head of the person being massaged is inserted, as recited in claims 7, 15, 26 and 30. Taylor '771 further fails to disclose or suggest a device as described above in this paragraph in which the fingers define a head-receiving space which extends between the free ends and the opposite ends of the fingers and which has

an opening formed by a juxtaposition of the free ends of the fingers, at least a portion of the head-receiving space having a circumference which exceeds a circumference of the opening whereby, in use, when the device is lowered onto the head, the free ends of the fingers apply pressure to and thus massage the head. In addition, Taylor '771 fails to disclose or suggest a device having such fingers in which each finger has a transversely extending portion immediately adjacent a handle, as recited in claims 15 and 30.

It is respectfully requested that the U.S. PTO reconsider and withdraw this rejection.

Claims 1, 4, 6-8, 10, 13-17, 19, 22-27 and 30-32 were rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 2,113,444 (Erickson '444) in view of Rabin '799.

Erickson '444 discloses a vibrating motor which includes a handle 5, a motor driven vibration producing unit formed by eccentrically mounting an element 14 on a motor shaft 7, and a scalp massaging appliance S which includes a series of resilient fingers 19.

Neither Erickson '444 nor Rabin '799 disclose or suggest a head massaging device comprising a plurality of fingers which define a head-receiving space having an opening at one end formed by a juxtaposition of the free ends of the fingers, at least a portion of the head-receiving space having a circumference which exceeds the circumference of the opening. In addition, the vibration producing unit of Erickson '444 is not coupled to ends of the fingers remote from their free ends which define an opening into which the head of the person being massaged is inserted, and neither Erickson '444 nor Rabin '799 contains any disclosure which would motivate one of skill in the art to modify the device disclosed in Erickson '444 such that the vibration producing unit of Erickson '444 or any other vibrator would be coupled to the ends of the fingers remote from the free ends of the fingers.

Furthermore, the Applicant respectfully disagrees with the statement in the Office Action that ". . . there appears to be no unobviousness to shape the fingers as desired to best

conform to the shape of a person's head." It is improper for the U.S. PTO to identify features recited in a claim which are not shown in the prior art references and simply say that there is no unobviousness with regard to such features; rather, it is incumbent upon the U.S. PTO, in asserting that a claimed invention would have been obvious in view of the prior art, to show that the prior art provides disclosure which would motivate one of skill in the art to make selections so as to arrive at the claimed invention. Such motivation must be found *in the references themselves* not in the Office Action or in the Applicant's specification and claims.

It is respectfully requested that the U.S. PTO reconsider and withdraw this rejection.

Claim 33 was rejected under 35 U.S.C. §103(a) over Erickson '444 in view of Rabin '799, further in view of Rowe.

The Office Action contains an allegation that Rowe discloses the inclusion of a spherical end to fingers. Any such disclosure in Rowe would not overcome the shortcomings of Erickson '444 and Rabin '799 as those references are attempted to be applied against claim 30, from which claim 33 ultimately depends.

It is respectfully requested that the U.S. PTO reconsider and withdraw this rejection.

If the Examiner believes that contact with Applicant's attorney would be advantageous toward the disposition of this case, the Examiner is herein requested to call Applicant's attorney at the phone number noted below.

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-1446.

Respectfully submitted,

April 8, 2004

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